

Application Serial Number 10/538,620  
Response to Office Action  
Dated December 13, 2006

### **REMARKS / DISCUSSION OF ISSUES**

Claims 1-16 are pending in the application. Claims 1 and 11 are independent claims. Claims 11-16 are new.

Unless indicated to the contrary, claims are amended for non-statutory reasons, to replace European-style claim phraseology with American-style claim language.

New claims are added to restore at least partially the original range of claims that existed before multiple dependencies were removed in the preliminary amendment. No new matter is added.

Applicants gratefully acknowledge the indication of receipt of all certified copies of the priority document(s). Applicants respectfully request the approval of the filed drawings.

### **Rejections Under 35 U.S.C. § 102**

Claims 1-9 were rejected under 35 U.S.C. § 102(b) as being anticipated by *Altshuler, et al.* (U.S. Patent Publication 2002/018370 A1). For at least the reasons set forth herein, Applicants respectfully submit that these claims are patentable over the applied art.

A proper rejection of a claim under 35 U.S.C. § 102 requires that a single prior art reference disclose each element of the claim. *See, e.g., W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983). Anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference. *See, e.g., In re Paulsen*, 30 F.3d 1475, 31 USPQ2d 1671 (Fed. Cir. 1994); *In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990). Alternatively, anticipation requires that each and every element of the claimed invention be embodied in a single prior art device or practice. *See, e.g., Minnesota Min. & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992). For anticipation, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *See, e.g.,*

Application Serial Number 10/538,620  
Response to Office Action  
Dated December 13, 2006

*Scripps Clinic & Res. Found. v. Genentech, Inc.*, 927 F.2d 1565, 18 USPQ2d 1001 (Fed. Cir. 1991).

Claim 1 is drawn to a device for treating human skin and features:

*"...a radiation filter positioned in the radiation path and adapted to absorb radiation of a wavelength above a first threshold value and to substantially reflect or absorb radiation of a wavelength below a second threshold value..."*

Claim 11 includes a similar feature.

At the outset, Applicants respectfully submit that a proper rejection within the guidelines of MPEP § 706 has been provided. A basic goal of examination as set forth in MPEP § 706 is to clearly articulate any rejection early in the prosecution process so that the applicant has the opportunity to provide evidence of patentability and otherwise reply completely at the earliest opportunity. Applicants respectfully submit that a rejection has not been clearly articulated. Rather, in a rejection of nine claims the Office Action recites five features allegedly found in four paragraphs of the applied art. This leaves Applicants to review the cited portions and to attempt to determine that which the Examiner considers to anticipate the features within the framework of the law governing anticipation. Thus, rather than particularly point out the allegedly anticipated features allegedly found in the applied art, the Examiner merely refers to portions of the applied art, with no particular citation of elements allegedly found therein. Accordingly, Applicants respectfully submit that a rejection has not been clearly articulated.

The above notwithstanding, Applicants respectfully submit that the reference to *Altshuler, et al.* fails to disclose at least the noted features of claims 1 and 11. In particular, in the portion of the reference relied upon in the Office Action (paragraphs [0130] – [133]), a description of a filter 6 is provided. This filter alters attenuation based on incident power. Moreover, the filter 6 may include liquid (e.g., water) and particles in suspension with the differential in their indices of refraction being about zero when the liquid is frozen. However, the indices of refraction are very different when the medium is in a liquid versus in a crystal phase. After the liquid melts, the attenuation increases. The benefit of this arrangement is that when the cooling capabilities are reduced by the

Application Serial Number 10/538,620  
Response to Office Action  
Dated December 13, 2006

melting due to heat, the attenuation of radiation increases to prevent tissue damage. Regardless, the reference to *Altshuler, et al.* attenuates the radiation based on the incident power and not on the basis of wavelength as featured in claims 1 and 10.

While the reference addresses the attenuation of infra-red radiation of wavelengths of 1.4  $\mu\text{m}$  to 1.9  $\mu\text{m}$ , there is no disclosure of a filter adapted to absorb radiation of a wavelength above a first threshold value and to absorb or reflect radiation below of radiation of a second threshold value. Rather, as discussed above, the reference discloses attenuation based on the incident power or fluence of the incident radiation.

Therefore, because the reference fails to disclose at least one feature of each of claims 1 and 11, a prima facie case of anticipation based on *Altshuler, et al.* cannot be made. Therefore claims 1 and 11 are patentable over the applied art. Moreover, claims 2-10 and 12-16, which depend from claims 1 and 10, respectively, are also patentable at least for the same reasons as claims 1 and 10.

#### **Rejections under 35 U.S.C. § 103**

Pending claim 10 was rejected under 35 U.S.C. § 103(a) as being in view of *Altshuler, et al.* and another secondary reference. Applicants note that this claim depends from claim 1, and therefore are patentable over the applied art for at least the same reasons as claim 1. Applicants in no way concede the propriety of this rejection and reserve their right to provide evidence of patentability over these references in future correspondence, if necessary.

#### **Conclusion**

In view the foregoing, applicant(s) respectfully request(s) that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance.

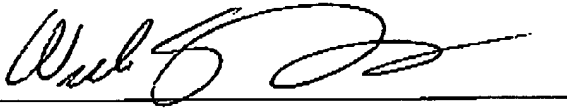
If necessary, the Commissioner is hereby authorized in this, concurrent, and further replies to charge payment or credit any overpayment to Deposit Account Number

Application Serial Number 10/538,620  
Response to Office Action  
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50-0238 for any additional fees, including, but not limited to, the fees under 37 C.F.R. §1.16 or under 37 C.F.R. §1.17.

If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted on behalf of:  
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